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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,462	07/25/2003	Marlene Ann Sexson	SXS-031	3243

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EXAMINER
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DOAN, ROBYN KIEU

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 08/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/627,462

Applicant(s)

SEXSON, MARLENE ANN

Examiner

Robyn Doan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

Applicant's Amendment filed 6/21/2006 has been entered and carefully considered. Claim 8 has been amended. Arguments regarding the 35 U.S.C 103 (a) rejections have not been found to be persuasive, therefore, claims 1-18 are rejected under the same ground rejections as set forth in the office action mailed 3/16/2006.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim(s) 1-18 do not invoke 35 U.S.C. 112, sixth paragraph, since: the phrase "means for" or "step for" is not used; the "means for" or "step for" is not modified by functional language; or the "means for" or "step for" is modified by sufficient structure, material, or acts for achieving the specified function.

2. Claims 1, 2, and 6-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658).

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Gingrich discloses a folding toothbrush with a handle arm (8) and a bristle arm (10) including bristles. The bristles have an end attached to the bristle arm (10) and a free end. The attached end and the free end defining a bristle axis. A stud (24) attaches the bristle arm (10) to the handle arm (8) such that the two arms can be positioned relative to each other by rotation in an arc in the plane that generally includes the two arms of the toothbrush, as discussed in column 2, lines 37-42. The stud (24) is generally perpendicular to the bristle axis. The bristle arm (10) and the handle arm (8) are positioned generally collinearly in the plane together defining a toothbrush length. The toothbrush length has a bristle end and a terminus. The bristle arm (10) and the handle arm (8) overlap. As shown in Figure 5, the overlapping portion is at least 1/5 of the entire length of the toothbrush.

Regarding the limitation in claims 6-10 that the handle arm and bristle arm are manufactured from sheet plastic, the method of forming the product is not germane to the issue of patentability of the product itself provided that the prior art product is the same or an obvious variant of Applicant's product. The burden is upon the Applicant to show unobvious differences between the claimed product and the prior art product. Gingrich states that the bristle arm (10) and the handle arm (8) are made from plastic in column 2, lines 29-35. However, Gingrich does not disclose that the plastic is in the form of a sheet prior to making the toothbrush. The limitations of the handle arm and the bristle arm being manufactured from sheet plastic does not make a structural difference in the final product.

Gingrich states in column 1, lines 10-12 and 21-24 that the handle is “relatively short” and that the toothbrush is “pocket-sized.” However, Gingrich does not disclose any specific dimensions. Rollerer teaches a travel toothbrush that has a foldable handle including a bristle arm (14) and a handle arm (20). According to lines 45-46 of column 4, the total length of the toothbrush only needs to be between 3.5 and 4 inches long. Each arm only needs to be between 1.94 and 2.19 inches long. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the length of the toothbrush 4 inches long, in order for the toothbrush to be small enough to fit in a person’s pocket.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Gingrich and Rollerer so that the thickness of the handle arm is within the range of 0.01 inches and 0.1 inches and the thickness of the bristle arm within the range of 0.08 inches to 0.5 inches, since such modifications would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ (CCPA 1955).

3. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Rollerer (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Hill (US 2,418,933).

Gingrich discloses the features discussed above, but does not disclose the use of a grommet for attaching the arms together. Hill discloses the use of a grommet (18)

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for pivotally attaching two elements together in column 4, lines 17-19. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pivotally attach the arms of Gingrich to each other by an annular grommet, as taught by Hill, since a grommet is a well known functional equivalent of the stud (24) and hole (20) of Gingrich.

4. Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Dootson (US 2,409,347).

Gingrich discloses the features discussed above, but does not disclose the use of a grommet for attaching the arms together. Dootson discloses the use of a rivet or grommet (20) for pivotally attaching two elements together in column 2, lines 6-10. It would have been obvious to one having ordinary skill in the art at the time the invention was made to pivotally attach the arms of Gingrich to each other by an annular grommet or rivet, as taught by Dootson, since rivets and grommets are well known functional equivalents of the stud (24) and hole (20) of Gingrich.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Kassai (US 5,178,170).

Gingrich discloses the features discussed above, but does not disclose the use of a brad for attaching the arms together. Kassai discloses the use of a brad (60) for pivotally attaching two elements together in column 3, lines 52-54. It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to pivotally attach the arms of Gingrich to each other by a brad, as taught by Kassai, since a brad is a well known functional equivalent of the stud (24) and hole (20) of Gingrich.

5. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Goldenberg (US 6,039,050).

Gingrich discloses the features discussed above, but does not disclose floss located in the handle arm. Goldenberg discloses floss (35) in the handle (20) of a toothbrush, as shown in Figures 10-12 and discussed in column 4, lines 11-25. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the handle arm of Gingrich with floss attached to it, as taught by Goldenberg, in order to provide a way for the user to be able to floss his teeth without touching the floss.

6. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Chodorow (US 5,829,293).

Gingrich discloses the features discussed above, but does not disclose a detachable toothpick in the handle arm. Chodorow discloses a flosser (10) that includes a detachable toothpick (314) integrally formed in the handle, as shown in Figure 28 and discussed in column 6, lines 6-31. It would have been obvious to one having ordinary

skill in the art at the time the invention was made to make the handle of Gingrich with a detachable toothpick integrally formed in the handle, as taught by Chodorow, in order to provide two different devices at a low cost of manufacturing and packaging only one, and to provide a convenience for the user to purchase and only carry one item.

7. Claims 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Rolleri (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Curran (US 2,454,995).

Gingrich discloses the features discussed above, but does not disclose that the arms are made of laminated cardboard. Curran discloses a toothbrush with a cardboard bristle arm (body 14) and handle arm (end 17), as discussed in column 1, lines 47-51. It is well-known that toothbrushes get wet, since people put them in their mouths during use, and it is also well-known that cardboard is laminated to prevent it from getting wet or torn (for example, identification cards). It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the arms of Gingrich out of cardboard, as taught by Curran, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416 (CCPA 1960). It would have been obvious to laminate the cardboard, since it is well-known to laminate cardboard in order to prevent it from getting wet or torn. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the combination of Gingrich, Rolleri, and Curran so that



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the cardboard is of a thickness within the range of 0.02 inches to 0.25 inches, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ (CCPA 1955).

8. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Shimizu ('522).

Gingrich discloses the features discussed above, but does not disclose that the arms are made of bamboo. Shimizu teaches the use of bamboo as an inexpensive and rigid material for use in making a toothbrush bristle arm (brush head 2) and handle arm (brush handle 1), as discussed in column 2, lines 12-21. It would have been obvious to one having ordinary skill in the art at the time the invention was made to make the arms of Gingrich out of bamboo, as taught by Shimizu, in order to provide an inexpensive and rigid toothbrush handle.

9. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Wiley (US 3,267,512).

Gingrich discloses the features discussed above, but does not disclose that the arms are made of vinyl. Wiley teaches the use of vinyl plastic as an inexpensive and rigid material appropriate for use in toothbrush handles. It would have been obvious to

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one having ordinary skill in the art at the time the invention was made to make the handle of Gingrich out of plastic vinyl, as taught by Wiley, in order to provide an inexpensive and rigid handle.

10. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gingrich (US 2,989,765) in view of Roller (US 5,003,658) as applied to claims 1, 2, and 6-11 above, and in further view of Gordon.

Gingrich discloses the features discussed above, but does not disclose that toothpaste is applied to the toothbrush in advance of purchase by a consumer. Gordon discloses a toothbrush (10) with toothpaste (20) applied to it in advance of purchase by a consumer, as discussed in column 2, lines 39-42. It would have been obvious to one having ordinary skill in the art at the time the invention was made to coat the toothbrush of Gingrich with toothpaste in advance of purchase by a consumer, as taught by Gordon, in order to provide the toothbrush ready to be used without having to separately purchase toothpaste.

### ***Response to Arguments***

Applicant has argued that the size of the device and how the device being manufactured are not mere design choices. Applicant's opinions in the remarks have been considered, however, it has been found that there is no criticality given to the size of the device in the original disclosure at the time the application was filed, therefore a change in size would have been obvious within the level of ordinary skill in the art. Also,

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Applicant has argued choice of materials may not be functional, however as stated above, the limitations of the handle arm and the bristle arm being manufactured from sheet plastic does not make a structural difference in the final product and since the claim is directed to an article claim not a method of manufacturing a device, therefore the intended use is given a little weight.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

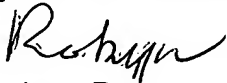
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robyn Doan whose telephone number is (571) 272-4711. The examiner can normally be reached on Mon-Fri 8:30-6:00.

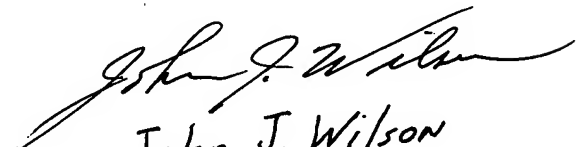
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris Rodriguez can be reached on (571) 272-4964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Robyn Doan  
Examiner  
Art Unit 3732



John J. Wilson  
Primary Examiner